R E P O R T R E S U M E S

ED 012 648 RC 001 147

DEVELOPMENT OF JUVENILE COURT SYSTEMS IN RURAL AREAS.

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PUB DATE SEP 63

EDRS PRICE MF-$0.25 HC-$0.68 17P.

DESCRIPTORS- *COURTS, COURT LITIGATION, COURT ROLE, *COURT DOCTRINE, CORRECTIVE INSTITUTIONS, *DELINQUENCY PREVENTION, DELINQUENCY REHABILITATION, LEGAL PROBLEMS, PROBATION OFFICERS, RURAL ENVIRONMENT, RURAL FAMILY, *RURAL YOUTH, NATIONAL COUNCIL OF JUVENILE COURT JUDGES, DISTRICT OF COLUMBIA

THIS PAPER STATES THAT THE JUVENILE COURT IS RELATIVELY NEW IN AMERICAN JURISPRUDENCE, THE FIRST ONE HAVING BEEN ESTABLISHED IN 1899. UNIFORM STANDARDS WERE DEVELOPED IN 1923 AND HAVE BEEN REVISED FIVE TIMES SINCE, BUT ADOPTION INTO STATE LAWS HAS BEEN SLOW. PHILOSOPHY OF THE JUVENILE COURT IS PERSONALIZED AND INDIVIDUALIZED JUSTICE. TO CARRY OUT THIS CONCEPT, A MODEL PROGRAM SHOULD INCLUDE (1) A QUALIFIED JUDGE, (2) ADEQUATE PHYSICAL FACILITIES, (3) TRAINED PROBATION OFFICERS, AND (4) ADEQUATE COMMUNITY SUPPORT. SINCE MOST RURAL COMMUNITIES CANNOT FINANCE ADEQUATE FACILITIES AND SERVICES BY THEMSELVES, THE AUTHOR SUGGESTS THAT STATEWIDE JUVENILE COURT SYSTEMS BE ESTABLISHED. THIS PAPER WAS PREPARED FOR PRESENTATION AT THE NATIONAL CONFERENCE ON PROBLEMS OF RURAL YOUTH IN A CHANGING ENVIRONMENT (SEPTEMBER 1963). (SF)

ED012648

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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Prepared for

The National Conference on Problems of Rural Youth
in a Changing Environment

September 1963

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TABLE OF CONTENTS

	Page
History of the Juvenile Court	1
Diversity of Jurisdictions	2
Development of Standards and Uniformity	3
Philosophy of the Juvenile Court	4
Qualifications of Juvenile Court Judges	5
Model Juvenile Court Program	5
The Rural Juvenile Court	6
Improving Rural Juvenile Court Systems	8
Footnotes	11

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HISTORY OF THE JUVENILE COURT

At the dawn of the twentieth century a brilliant new star appeared on the horizon of American Jurisprudence. The Juvenile Court was born and as the twentieth century drew to a close the then revolutionary juvenile court concept spawned in the genius of a compassionate people with an ever developing social conscience came into fruition.

But the Juvenile Court did not spring forth full-fledged from the forehead of Jove as legend tells us Minerva did. Rather it was a process of development of comparatively recent origin, growing out of the realization of a changing and enlightened society that the traditional idea of retaliation and harsh punishment, and determent of potential offenders, was not a satisfactory method for the treatment, control, and rehabilitation of youthful offenders.

Until early in the nineteenth century the harsh criminal laws were applied to adults and children alike and in some instances led to the application of capital punishment of very young children. Just 155 years ago in New Jersey a boy of 13 was hanged for an offense committed when he was 12 years of age.[1] The horrifying conditions in the jails of that period where children were confined with adult prisoners are well known.[2]

Prior to the origin of the juvenile court several states enacted statutes designed to relieve errant youth from the cruel treatment applied to them under the criminal laws. The first of these laws separated the confined child from the adult criminals. The first reformatory for child offenders was established in New York in 1825. Pennsylvania and Massachusetts in 1828 and 1847, respectively, founded similar institutions, slowly followed by other states, some going so far as to prohibit the confinement of children in penitentiaries except for serious offenses.[3]

Next, the legislatures of some states enacted laws providing separate hearings for children and establishing a probation system, thus, permitting suspension instead of confinement. Again Massachusetts was the leader. New York, Indiana, and Rhode Island soon followed the lead of Massachusetts in the correctional field, in providing separate hearings and probation systems for children.[4]

While these early legislative efforts came close to the Juvenile Court in its present form, they failed to embody its basic concept -- the concept of individualized justice -- that child offenders shall be treated, not as criminals or as legally charged with a crime, but as wards of the state,

through social casework services for their own protection and that of society.5/

The first Juvenile Court in the United States (in fact in the world) was the "Juvenile Court of Cook County", which was established in 1899 when the Illinois Legislature enacted a law entitled "an act to regulate the treatment and control of dependent, neglected and delinquent children." Other than in Cook County, Circuit and County Courts were given jurisdiction of cases arising under the law. For counties with a population of over 500,000 (Cook County, Chicago being the only one) a Juvenile Court was created which had all the essential features of the Juvenile Court as it exists today - a Juvenile Court Judge, a separate hearing room, separate records, informal procedure -- the elimination of arrest by warrant, indictment, trial by jury, and the elimination of most of the elements of the criminal proceedings.6/

Colorado soon followed and established juvenile courts in 1903. By ten years after the enactment of the Illinois law 20 states and the District of Columbia had adopted Juvenile Court laws. The Juvenile Court law spread rapidly and by 1920 all but three states had followed suit. Today every state in the union has a juvenile court law.7/

While special juvenile courts were created in a number of states in the large cities (Cleveland, Ohio, Pittsburg, Pennsylvania, Milwaukee, Wisconsin, and Denver, Colorado, for example) generally Juvenile Court jurisdiction was given to existing courts.

DIVERSITY OF JURISDICTIONS

The geographical area of jurisdiction in most states is the county, although in some states there are Juvenile Courts created by special acts which have only city-wide jurisdiction.8/ At least 3 states, Connecticut, Utah and Delaware, have a state-wide Juvenile Court system. Rhode Island and New York have the Juvenile Court in a state-wide family court system.9/

Thus, lack of uniformity and even utter confusion exists not only as to the designation of the court for jurisdiction, but as to the title of the court as well. Depending on the state or the county in a state, we find the Juvenile Court jurisdiction in the Circuit Court, the Superior Court, the District Court, the Court of Common Pleas, Probate Court, the County Court, Special Juvenile Court, Juvenile and Domestic Relations Court, and even in some cases, the Municipal or Justice Courts. In some states juvenile court jurisdiction is a hodge-podge. For example, In Alabama three counties have independent Juvenile Courts; three others have independent Juvenile and Domestic Relations Courts, in 14 counties inferior courts have Juvenile Court jurisdiction; in one county the jurisdiction is in the Circuit Court, and in another the Circuit Court and the Probate Court have concurrent jurisdiction. In the remaining counties the Juvenile Court jurisdiction is placed in the Probate Courts.10/ Oregon has Juvenile Court jurisdiction in the Circuit Court in 13 counties, in the District Court in 2 counties, and in the remaining 21 counties the County Court has the jurisdiction to administer the Juvenile Court Law. This situation exists in a number of the other states.11/

Nor is there any uniformity in the Juvenile Court laws themselves. While the Juvenile Court laws of the various jurisdictions contain most of the basic elements of the juvenile court concept in particular provisions, they vary from state to state: in fact, there are as many different juvenile court laws as there are states (and the District of Columbia).

DEVELOPMENT OF STANDARDS AND UNIFORMITY

Because the Juvenile Court was a new institution in American jurisprudence, no experience existed to guide its development of procedures and the qualifications and training of its personnel. The problems of pioneering in this field were compounded by the lack of uniformity in the juvenile court laws of the various states and the fact that staff and resources available to the court varied from court to court.

As a body of experience began to develop it became apparent that an orderly and constructive evolution of a good juvenile court must be predicated on the development of uniform standards.

In 1923 the Children's Bureau and the National Probation Association collaborated to develop a set of Uniform Standards. Subsequently the National Probation Association, later the National Probation and Parole Association, and now the National Council on Crime and Delinquency, published a "Standard Juvenile Court Act". This agency was assisted in the preparation of the Act by a committee of distinguished juvenile court judges. The Standard Act has been revised five times. The last revision, published in 1959, was prepared by the National Probation and Parole Association in cooperation with the National Council of Juvenile Court Judges and the U. S. Children's Bureau.[12]

The Standard Act has proved to be a catylist in moving toward uniformity in the state juvenile Court laws. Provisions of this model act have been incorporated in the juvenile court laws of many of the states, particularly in the last few years when states like Florida, Mississippi, Oregon, Nebraska, and others have adopted entirely new juvenile court laws.

The Standard Act also has initiated a trend toward standardization of procedures in the operation of the individual Juvenile Courts. This standardization will continue to develop as more states incorporate its provisions into their Juvenile Court Laws. It has and will provide a standard by which the individual court may measure the quality and effectiveness of his court services program. This has and will tend to upgrade the operation of the individual court and the quality of services it is providing for the community.

Dean Roscoe Pound, one of the great scholars of American jurisprudence, characterized the Juvenile Court concept as the most significant advance in the administration of justice since the Magna Charta.[13]

PHILOSOPHY OF THE JUVENILE COURT

Significantly it was a report by a committee of Chicago lawyers which first defined the concept and philosophy of the Juvenile Court -- a report which resulted in the establishment of the first Juvenile Court by the Illinois Legislature. Their words have stood the test of time:

> "The fundamental idea of the (juvenile court) law is that the state must step in and exercise guardianship over a child found under such adverse social or individual conditions as develops crime....It proposes a plan whereby he may be treated, not as a criminal, or legally charged with crime, but as a ward of the state, to receive practically the care, custody and discipline that are accorded the neglected and dependent child, and which, as the act states, 'shall approximate as nearly as may be that which should be given by its parents.'"14/

How can we improve this cogent statement of a new and extraordinary idea conceived in the genius of the minds of a group of professional men? Their words truly symbolize the developing conscience of a society of people who want to help rather than hurt their errant children.

The recognition that people are different is the basis of the philosophy of the Juvenile Court. It is personalized and individualized justice. In Juvenile Court terms "individualized justice" means "individualized treatment." Individualization means "individualized treatment." Individualization means that the problems of children, although referred to court on identical complaints, must be separated when considered by the court. It means a personalized approach with the coordination of resources and skills in behalf of the child and his problem, leading, of course, to the ultimate protection of society. The frequent posturing of the critics of the Juvenile Court stems from their failure to understand that this court has the same philosophy and approach of any other equity court.

As Dean Roscoe Pound so eloquently said:

> "It is in such connections that the law, which has grown up out of experience of how to adjust relations so as to take account of all the interests involved, so far as possible by general precepts, shows itself superior to administration which tends to treat each case as unique and so to lose sight of or to ignore some of the interests to be affected. From this standpoint it was especially fortunate that equity judicially administered, was taken as the basis of the jurisdiction of the juvenile court from the beginning. The flexibility of equity procedure, the ability of equity to deal with numerous parties who have conflicting or overlapping interests in one proceeding, and its power of molding relief to the facts of the case in hand, are decisive."15/

Before going further I think it appropriate to discuss the necessary qualifications of a good juvenile court judge, and, model juvenile court operation and facilities.

QUALIFICATIONS OF JUVENILE COURT JUDGES

The importance of the judge who has the function of administering justice within the extraordinary framework of the juvenile court law is obvious. He should be specially qualified for the responsibility of working with children and understanding the problems involved and the remedial measures and resources applicable. Since he represents the authority of the state acting in parens patrie and must be a counselor and father, he is not a mere arbiter of controversies.

In addition to the exacting qualifications of other judicial officers, a juvenile court judge must have special qualities of character, temperment, and dedication to fit him for the serious work of a children's court. He should be trained and experienced in the law and in deep sympathy with the principles underlying juvenile court laws and philosophy; he must be intellectually flexible, willing, and eager to learn, knowledgeable in the behavorial sciences, and have the capacity to utilize the guidance and skill of professionally trained people in other disciplines; he must possess an emotional capacity for the understanding of and sympathy with the problems of families and children, and with a deep sense of dedication to deal with them with compassion, fairness, and patience; he must have the vision and imagination to stimulate community support, not only for the strengthening of existing services, but to point out and exert effective leadership for the creation and development of additional needed services for the children and families by the community, as well; he must have the ability to inspire the confidence and respect of children and their parents and to obtain the cooperation of the police, health,and social agencies, institutions, school teachers, and administrators, and others; he must not only have administrative ability but must be able to attract professionally qualified people to his staff and structure them into a strong effective team![16/]

MODEL JUVENILE COURT PROGRAM

A model juvenile court with an adequate program of services must be predicated upon a number of essential components. I list what I consider the 11 most important ones:

1. A qualified judge, sympathetic with the juvenile court philosophy, and who understands the needs of children and who will provide imaginative and effective leadership in the community.
2. Adequate physical facilities for a hearing room, and, clerical and staff operation, whether located in the detention home or otherwise. Facilities should be designed to provide privacy, confidentiality of records, and the efficient operation of staff.

3. A trained, qualified staff of probation officers whose skill and techniques are constantly being improved by an effective in-service training program.

4. An efficient administrative organization with responsibilities clearly delineated.

5. Fully developed intake policies in written form defining responsibility and subject to the control of the court including defined criteria for detention admission under control of the court.

6. Adequate community support to provide necessary staff and facilities for an effective program of juvenile court services. The most effective vehicle to obtain community support is a Citizens Advisory Council to the court.

7. The availability of proper and adequate detention facilities.

8. A fully developed foster home program for neglected and delinquent children.

9. Psychological and psychiatric services or access thereto.

10. Institutional services of structured living programs available for use by the court.

11. Adequate facilities and resources for special treatment of mentally defective and emotionally disturbed children who cannot and should not be on probation.

Against the background we have thus far developed let us examine the rural juvenile court as it exists today.

THE RURAL JUVENILE COURT

Since we are concerned in this discussion with the Juvenile Court in rural areas, a definition of what constitutes a "rural court" is in order. For the purpose of the paper I adopt the definition as defined and used by the Children's Bureau of the U. S. Department of Health, Education and Welfare. The Bureau defines a "rural court" which has less than 30 percent of the population it is serving living in urban areas.[17/]

Of over 3,000 counties in the United States, 2,605 or 85 percent serve populations under 50,000. There are 257 counties with a population between 50,000 and a 100,000. Thus, applying the U. S. Children's Bureau definition we find that most of these counties are served by "rural Juvenile Courts". I am sure that there are counties with over a 100,000 population, depending on geographic size and the location of the population in the county, which would come within the terms of the definition.

While the Juvenile Court Acts in all states provide for probation services many counties in this country do not have probation service for the children processed by the Juvenile Court of that county. A recent study by the U. S. Children's Bureau disclosed that less than half of the 3,000 counties in the United States have juvenile probation services and only one-tenth of the probation officers have specialized training.18/ This is true of many of the rural juvenile courts because the small number of children referred does not justify the expense of providing probation service.

In smaller communities the Court sees very few children in a year and is only a juvenile court when a child is referred. The judge usually has no special training or qualifications for handling children's cases, and in counties where the justice of the peace, municipal judge and other minor court judges, such as a county or probate court has juvenile court jurisdiction, the judge often does not have legal training.

Too often the rural juvenile court judge either has no probation officer at all or at best only part-time probation officer, who also serves as a deputy sheriff, welfare worker, clerk of the court, bailiff, school truant officer or other positions. Thus, the rural court judge is handicapped by the lack of staff or trained and qualified staff, and detention or other facilities. He must hold hearings for the children referred without benefit of diagnostic prehearing studies, and, if the disposition is probation, probation is without the benefit of skilled treatment, oriented supervision if there is any supervision at all.19/

As an example of such conditions is described by a staff member of the National Council on Crime and Delinquency:

> "In one of these states, over 90 percent of the courts with juvenile jurisdiction are presided over by men who are elected as clerks of another court, not specifically as judges. They are not required to have legal training or any other special education. Most of these so-called juvenile courts have no special quarters or hearing chambers and no special files for juvenile legal records, and they must borrow probation service from outside agencies already overburdened with their own work. Over 70 per cent of the people in this state live in counties served by such courts.
>
> "In another of these three states, less than 25 percent of the chief probation officers and 50 percent of the probation officers have a college degree. Over 60 percent of the chief probation officers and 30 percent of the probation officers have a high school education or less."20/

At least 75,000 children of juvenile court age are confined in county jails every year. The tragedy is that most of these jails fail to meet minimum standards even for adult prisoners.21/ This is true even though in most states the juvenile court laws expressly prohibit the confinement of children under a specified age in jails and police stations. 22/ But so

often no other facility for the detention of children exists. In fact, most states have fewer than six separate detention facilities, and many states have none at all.[23]

And this problem is peculiar to the rural court for detention in a less populous area can hardly be other than in separate rooms set aside in the county jail for the detention of children. Generally in such areas so few boys and girls are detained that it is uneconomical for the community to establish a facility that will be used but a very small proportion of the time. Less than 10 percent of the juvenile courts in the country have to detain a sufficient number of children to justify maintaining even a very small detention home.

Apropos to the theme of this paper are the observations of a professional in corrections:

> "1. The present condition of our juvenile court system as a whole is deplorable in terms of universality of coverage and the quality of service.
>
> "2. There is no concerted movement in progress to require, or even to help, juvenile courts to obtain professionally qualified staff; and
>
> "3. There is no concerted movement in progress to make juvenile court services of acceptable quality available in all localities, so that the kind of treatment a child gets is not dependent on the vagaries of the geographical accident of where he happens to live." [23]

The Honorable Orman W. Ketcham, Judge of the Juvenile Court of the District of Columbia, recently wrote a challenging article entitled the "Unfulfilled Promise of the Juvenile Court". He propounds the thesis that the state having provided this extraordinary approach to handling of children in trouble has failed in its obligation and has not provided the Juvenile Courts with sufficient trained judges and professional staff, and adequate detention facilities. He maintains that unless the state assumes this obligation the Juvenile Court movement which was launched with such promise over 60 years ago in Chicago is in grave danger of floundering.[24]

IMPROVING RURAL JUVENILE COURT SYSTEMS

I think I agree with Judge Ketcham that the state will have to become involved in initiating the proper machinery for the setting of standards for the qualifications of juvenile court judges, Court Operations and Juvenile Court detention facilities. This means providing the proper statutory agency sufficiently financed, to develop standards and to provide consultation services for the individual courts. A number of states have already accomplished this -- Wisconsin being an outstanding example.

I believe, however, that the proper vehicle for this responsibility is a council of state juvenile court judges, such as exists in Pennsylvania, Washington, and Ohio.

It is my firm conviction that the judges themselves should have the responsibility of developing standards for the operation of the courts they are charged with administering within the framework of the Juvenile Court laws.

Such bodies properly constituted and provided with adequate financial support can develop standards and programs of continuing education for Juvenile Court Judges. Such programs have been highly successful in Ohio and Minnesota and to a lesser degree in a number of other states. The National Council of Juvenile Court Judges is now engaged in a three-year demonstration training project for the continuing education of juvenile court judges, under a grant from the National Institute of Mental Health. Such programs are particularly valuable and helpful to the judges who preside in rural courts. One of the greatest needs of the rural juvenile courts is that of qualified professional consultation services.

It is obvious that the majority of the rural communities cannot finance adequate Juvenile Court facilities and services by themselves. One approach toward the solution of this problem is the establishment of a statewide juvenile court as contemplated by the Standard Juvenile Court Act. Under such a plan the state would be divided into districts with one or more counties in a district. Financial support could be provided by either the state or the local communities, or by both sharing the cost of facilities and services. This approach I think is the ultimate solution to the problems of the rural Juvenile Court. But this will not materialize on a nationwide basis for years to come and in the meantime other avenues must be exploited.

A number of states have legislation permitting two or more counties to construct and operate a detention facility. Such laws are usually not mandatory and generally are not taken advantage of by rural counties. An example of how the state may approach the problem of stimulating action on the part of counties to construct a regional detention facility is the Virginia law where the state will reimburse local communities half the cost of construction (not to exceed $50,000, two-thirds of the salaries of detention personnel, and all equipment and operating costs.[25]/

Involvement in probation services has been undertaken by a number of states in a number of different ways. Five states with state-wide Juvenile Court systems all make some provision for probation services. There are a number of other approaches differing as to control, financial support, and supervision of, and setting standards for probation services. One of the best methods is that used by the state of Washington, where the State Department of Institutions grants a $30,000 annual subsidy to provide probation officers to rural counties which could not otherwise finance these positions.[26]/ This latter, I believe, is the proper approach for the involvement of the state. At no time should the local community be entirely relieved from the cost of such services. The county should share the cost with the state, as in Virginia and Washington.

However, the state must provide necessary legislation to implement the principles we have been discussing. The state must take the leadership but without destroying local autonomy and responsibility. The role of the state is to stimulate necessary action on the part of the local community and to provide necessary statutory and financial support so that judges may develop standards and procedures for court operation and qualifications for juvenile court judges.

There must be a concerted movement on the part of the Juvenile Court judges, the local community and the state, -- all working as a team and assuming their respective roles and responsibilities -- if there are going to be good juvenile courts in all rural communities. Only then will the auspicious beginning of the Juvenile Court movement be vindicated -- only then can the provocative challenge of Judge Ketcham be squarely met -- met with the knowledge that the "promise of the Juvenile will be fulfilled".

FOOTNOTES

1/ Sussman, Law of Juvenile Delinquency (Revised ed. 1959), p. 12.

2/ Loc. cit.

3/ Loc. cit., p. 13.

4/ Loc. cit., See also Hon. Don J. Young, Jr., The Difference Between Juvenile and Criminal Courts -- paper delivered at Green Bay, Wisconsin, Institute for Juvenile Court Workers, June 15, 1962.

5/ Loc. cit.

6/ Ibid., p. 14.

7/ Ibid., p. 15.

8/ Ibid., p. 25.

9/ Council of State Governments, Juvenile Delinquency. A report on state action and responsibilities (1962), p. 19.

10/ Council of State Governments, Juvenile Delinquency. A report on state action and responsibilities (1962), p. 19.

11/ Sussman, Ibid., p. 65.

12/ Ibid., p. 17.

13/ Schramm, Philosophy of the Juvenile, Annals of American Academy of Political and Social Science, January 1949, p. 101.

14/ Ibid., p. 102.

15/ Pound, "The Juvenile Court and the Law," 1944, Yearbook National Probation Association, p. 16.

16/ Ellrod and Melaney, "Juvenile Justice; Treatment or Travesty?" 11U Pitt. L. Rev. 277, 285; NPPA News, September 1955, p. 2; Guides for Juvenile Court Judges (1957), p. 127.

17/ Children's Bureau, Juvenile Court Statistics, 1961, p. 10.

18/ Larsen, New Approaches in the Juvenile Court Setting, Green Bay Wisconsin, May, 1962, p. 46.

19/ Council State Government, Juvenile Delinquency (1962), p. 19.

20/ McCrea, NPPA Journal, October 1957, p. 39.

21/ National Probation and Parole Association Detention Practice, 1960, p. 165.

22/ National Probation and Parole Association Detention Practice 1960, p. 166.

23/ Sussman, Juvenile Delinquency, (1959), p. 41.

24/ Ketcham, Unfulfilled Promise of the Juvenile Court, NCCD Journal, April 1961.

25/ McCrea, NPPA Journal October 1957, p. 389.

26/ Norman, NCCD Detention Practice, p. 174.

27/ Council of State Governments, Juvenile Delinquency (1962), p. 22.